

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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C.D. KOBSONS, INC.,

Docket No. 07 CV 11034
(SAS)

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY
INSURANCE COMPANY,

**REPLY TO
COUNTERCLAIM**

Defendant.

-----x

Plaintiff, C.D. KOBSONS, INC., by its attorneys, BRILL & ASSOCIATES, P.C. as and for it's Reply to defendants Counterclaim herein states as follows:

**AS AND FOR DEFENDANT'S REPLY TO
THE DEFENDANT'S COUNTERCLAIMS**

- 1) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "1" of the Counterclaim entitled "Factual Background" except admits that plaintiff sought the assistance of certain third parties acting in their capacity as qualified and experienced insurance brokers and/or agents to obtain property and commercial general liability insurance for the property located at 500 W. 28th Street, New York, New York and eventually obtained certain coverage from defendant.
- 2) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "2" of the Counterclaim entitled "Factual Background" except admits that defendant provided certain insurance to the plaintiff for a number of years between 2004 and 2007, the exact dates of which are presently unknown.

3) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "3" of the Counterclaim entitled "Factual Background" and refers the court to the specific terms and conditions of the United policy issued to plaintiff for the period stated.

4) Admits the truth of the allegations set forth in paragraphs "4" of the Counterclaim entitled "Factual Background".

5) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "5" of the Counterclaim entitled "Factual Background" and refers the court to the specific terms and conditions of the document referenced therein.

6) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "6" of the Counterclaim entitled "Factual Background" except admits that the coverage limits for certain portions of the policies issued by defendant were, from time to time, amended by the parties and others acting on their behalf.

7) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "7" of the Counterclaim entitled "Factual Background" and refers the court to the specific terms and conditions of the document referenced therein.

8) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "8" of the Counterclaim entitled "Factual Background" and refers the court to the terms, conditions and specific language of the documents referenced therein.

**AS AND FOR DEFENDANT'S RESPONSE TO
THAT PORTION OF THE COUNTERCLAIM
DESIGNATED AS "THE VIOLATIONS"**

9) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "9", "10", "11" and "12" of the counterclaim except admits that the plaintiff has, from time to time, received certain documents purported to be violations regarding the subject property and refers the court to the terms, conditions and specific language of the documents referenced therein.

**AS AND FOR DEFENDANT'S RESPONSE TO
THAT PORTION OF THE COUNTERCLAIM
DESIGNATED AS "MISREPRESENTATIONS
AND FAILURE TO DISCLOSE"**

10) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "13", "14" and "15" of the counterclaim and refers the court to the terms, conditions and specific language of the documents referenced therein.

11) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "16" of the counterclaim.

12) Denies the truth of the allegations set forth in paragraph "17" of the counterclaim.

13) In response to Paragraph "18" of the counterclaim, plaintiff cannot admit or deny the statements of intention contained therein.

**AS AND FOR DEFENDANT'S RESPONSE TO
THE FIRST COUNTERCLAIM**

14) In response to Paragraph "19" of the counterclaim plaintiff, repeats, reiterates and realleges each and every response to this Reply contained in Paragraphs "1" through "13" of this reply with the same force and effect as if more fully set forth at length herein.

15) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "20" of the counterclaim and refers the court to the terms, conditions and specific language of the documents referenced therein

16) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "21" of the counterclaim.

17) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "22" of the counterclaim.

18) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "23" of the counterclaim.

**AS AND FOR DEFENDANT'S RESPONSE TO
THE SECOND COUNTERCLAIM**

19) In response to Paragraph "24" of the counterclaim plaintiff, repeats, reiterates and realleges each and every response contained in Paragraphs "1" through "18" of this Reply with the same force and effect as if more fully set forth at length herein.

20) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "25" of the counterclaim.

21) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "26" of the counterclaim.

22) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "27" of the counterclaim.

23) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "28" of the counterclaim.

24) Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "29" of the counterclaim.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE
TO THE COUNTERCLAIMS**

25) The complaint fails to state a claim upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE
TO THE COUNTERCLAIMS**

26) The plaintiff, not being fully advised as to all the facts and circumstances surrounding the counterclaim, hereby asserts and reserves unto itself the defenses of accord and satisfaction, arbitration and award, contributory negligence, duress, estoppel, failure of consideration, fraud, illegality, laches, estoppel, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense which the further investigation of this matter may prove applicable herein.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
TO THE COUNTERCLAIMS**

27) Defendant did not comply with all conditions precedent entitling it to the relief requested herein.

WHEREFORE, plaintiff hereby demands that defendants' counterclaims be dismissed and judgment be entered in favor of the plaintiff together with an award of costs, fees and expenses as to this court seems just and proper.

Dated: New York, New York
December 24, 2007

BRILL & ASSOCIATES, P.C.

/s/ Haydn J. Brill
By: Haydn J. Brill (3040)
Attorneys for Plaintiff
111 John Street, Suite 1070
New York, New York 10038
(212) 374-9101
File No: 1296-NGM

To:

NICOLETTI GONSON SPINNER & OWEN LLP
Attorneys for Defendant
555 Fifth Avenue, 8th Floor
New York, New York 10017
(212) 730-7750

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

Jaime Merritt, being duly sworn, deposes and says:

That I am not a party to the within action, am over 18 years of age and reside in Monmouth County, New Jersey.

That on December 24, 2007, deponent served the within **REPLY TO THE COUNTERCLAIMS** upon the attorneys and parties listed below by electronically filing a true copy of the document with the United States District Court for the Southern District of New York via ECF.

NICOLETTI GONSON SPINNER & OWEN LLP

Attorneys for Defendant
555 Fifth Avenue, 8th Floor
New York, New York 10017
(212) 730-7750

/s/ Jaime Merritt

Jaime Merritt

Sworn to before me this
24th day of December, 2007

/s/ Haydn J. Brill

Notary Public

Docket No. 07 CV 11034 (SAS) Year 2007
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

C.D. KOBSONS, INC.,

Plaintiff,

-against-

UNITED NATIONAL SPECIALTY INSURANCE COMPANY,

Defendant.

REPLY TO THE COUNTERCLAIM

BRILL & ASSOCIATES, P.C.
Attorneys for Plaintiff
111 John Street, Suite 1070
New York, New York 10038
(212) 374-9101

To: ***

Attorney(s) for ***

Service of a copy of the within *** is hereby admitted.

Dated: ***

.....
Attorney(s) for ***

PLEASE TAKE NOTICE

that the within is a (certified) true copy of a ***
entered in the office of the clerk of the within named Court on ***

NOTICE OF

ENTRY

that an Order of which the within is a true copy will be presented for settlement to
the Hon. *** one of the judges of the within named Court, at ***, on ***, at *** .

NOTICE OF

SETTLEMENT

Dated: ***

BRILL & ASSOCIATES, P.C.
Attorneys for Plaintiff
111 John Street, Suite 1070
New York, New York 10038
(212) 374-9101
File No: 1296-NGM